IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/12/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE A.KULASEKARAN

O.S.A.No.83 of 2003 AND O.S.A.No.129 OF 2003
AND
C.M.P.NOs.5953 TO 5955 OF 2003

1.L.M.Menezes
2.Joseph C.Kuriacose
3.Harold D'Silva ... Appellants in both appeals

-Vs-

1.Rt.Rev.Dr.Lawrence Pius
2.Most Rev.Arul Das James
3.Rt.Rev.Tony Devotta
4.Rev.Fr.P.J.Lawrence Raj
5.Rev.Fr.Thomas Simon
6.Rev.Fr.K.S.Lawrence
7.Mr.Jeppiaar

8.Catholic Bishops Conference of India (CBCI),
rep.by its Secretary General
Most Rev.Oswald Gracias,
CBCI Centre, H1, Ashok Place,
(Near Gole Dakkhana),
New Delhi-110 021.

9.Most Rev.Archbishop of Goa,
Archbishop's House, "Altinha"
Panjim, Goa-403 001.
(nominated as Supervisor of
the Trust by the Testator)...Respondents in O.S.A.83/2003

1.Most Rev.Arul Das James
2.Rt.Rev.Dr.Lawrence Pius
3.Rt.Rev.Tony Devotta
4.Rev.Fr.P.J.Lawrence Raj
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Archbishop's House, "Altinha"
Panjim, Goa-403 001.
(nominated as Supervisor of
the Trust by the Testator)

10.The John De Monte Trust
(created in and by the Will of
Sir John De Monte dated
18th July, 1820), rep.by its Trustee,
Archbishop's House,
21, Santhome High Road,
Chennai-4. ...Respondents in O.S.A.129/2003

For appellants : Mr.Sriram Panchu, Senior Counsel
for M/s.T.Mohan and S.Devika

For respondents : Mr.M.K.Kabir for RR1, 4, 5 & 6
Mr.T.V.Ramanujam, Senior Counsel
for Mr.T.V.Krishnamachari
for RR2, 3, & 8
: Mr.T.R.Rajagopal,Senior Counsel
for R7

: Mr.R.Karthikeyan for R9

Appeals against the order dated 06.01.2003 made in Application Nos.3
081 and 3668 of 2002 in C.S.No.156 of 2002 on the file of this Court.

:J U D G M E N T

A.KULASEKARAN,J.

Since the issues involved in both these appeals are correlated, these
appeals are being disposed of in common.

2. Plaintiffs are appellants in these appeals, which are filed
against the common order of a learned single Judge of this Court, revoking the
leave granted, under Section 92 of C.P.C., and dismissing the applications for
impleading the Trust.

3. Leave was originally granted by an order dated 27.02.2002 in Application No.567 of 2002, to institute a suit only against the respondents herein under Section 92 of C.P.C., As the appellants failed to array the Trust as a defendant in the suit, later, an application to implead was filed. On the application preferred by the respondents herein to revoke the leave, the learned single Judge passed a common order allowing the application to revoke the leave and dismissing the application to implead.

4. Philanthropist Sir John De Monte was a Roman Catholic and a descendant of the Portugees, who settled down in India. He was gifted with brilliant talent, but not with money, during his childhood. He was employed by Mr.Christopher Bilderbeck as a Dubash. His honesty and ability placed him to the status of marrying Mary Bilderbeck, sister of Christopher Bilderbeck. Later, he amassed substantial wealth and acquired a lot of property, both movable and immovable. De Monte was a man of great religious faith and he constituted various religious, pious and charitable establishments and Trusts. De Monte left a Last Will and Testament dated 19th July, 1820, and subsequently, a CODICIL to the Will was signed and sealed on 25th April, 1821, thereby he bequeathed vast extent of properties in favour of "John De Monte Trust", which is named after him. The said Great man's noble thought and philanthropic attitude was to render services to the needy. The said Will was also probated by the Supreme Court of Judicature at Madras on 28th September, 1827.

5. The properties of the Trust have been managed by Madras-Mylapore Arch Diocese. The appellants herein made allegations against the respondents that the properties of the Trust were being mismanaged in violation of the instructions of the testator and a substantial extent of immovable properties were sold. One of the properties of the Trust is comprised in R.S.No.3923 of Mylapore Village of a total extent of 257 grounds and 81 sq.ft., consisting of buildings, which is commonly known as Bens Garden, which was proposed to be leased for long term to the seventh respondent, without proper advertisement or notice to the general public. The second respondent filed O.P.before the original side of this Court, seeking permission for long term lease to be given to the seventh respondent, which was also objected to by the appellants herein. The appellants felt that it was proper to file a suit under Section 92 of C.P.C., as this Court is the custodian of religious and charitable trusts, for removing the trustees, rendition of accounts and recovery of the properties alienated and to constitute a committee to manage the properties in the hands of the trust.

6. Leave was granted to the applicants on 27.02.2002, by the Original Side of this Court, to file a suit under Section 92 of C.P.C. The Trust not was arrayed as a party in the suit, hence they filed an application to implead the Trust as one of the defendants. The respondents also filed an application to revoke the leave.

7. The learned single Judge, after hearing both sides, revoked the leave granted and also dismissed the applications for impleading, on the ground that though the appellants are respectful persons of the locality and not the persons interested in the Trust, the averment of mismanagement of the

Trust properties was also not accepted and implead application cannot be allowed to cure the defect.

8. Learned Senior Counsel Mr.Sriram Panchu, appearing for the appellants, has submitted that the first appellant is a retired IAS Officer, having held offices of Secretary to Government of India, North Eastern Council, Shillong; a resident of Anna Nagar, Chennai; a Member of several Churches, devoted to training of girls from slum areas and one of the members of the Property Committee of De Monte Trust till 20 00; the second appellant is a Doctor of Science, having served for several decades of the Indian Institute of Technology, Kharagpur and Madras, associated with Archdiocesan Pastoral Council and Office of the Superintendent of Roman Catholic Schools, Parish Council Member and Secretary, Finance Committee etc.; the third appellant is a retired Corporate Head of Training Division, Hindustan Petroleum Corporation Ltd., having been involved in several activities of Archdiocese of Madras-Mylapore, and a long term office bearer of the Society of St. Vincent De Paul- a world wide charitable organisation and a constituent of the Catholic Church. The learned Senior Counsel has also submitted that the first appellant tendered his resignation from the Archdiocese Property Committee on 21.03.2000, since the respondents proposed to alienate Bens Garden property; that the appellants have made several representations against the mismanagement of the Trust properties by the second respondent to the other respondents, but no tangible action was taken. The appellants are persons interested in the Trust; the respondents have acted contrary to the object of the testator; that the application for impleading ought to have been allowed and the application for revocation of leave ought to have been dismissed; that the learned single Judge erred in passing orders contra and prayed for allowing the suit.

9. In support of his argument, the learned Senior Counsel relied upon the following judgments

i) (Anjaneya Sastri v. Kothandapani Chettiar and others) A.I.R. 1936 MADRAS 449, wherein the Hon'ble Supreme Court held as under :

"....Again, it is true that S.92 is in a sense an enabling section in that it confers on two or more members of the public a right to seek relief without any proof of special damage. But once the Court is moved, the scope of its enquiry must be determined in the light of what is germane to the various matters indicated in S.92 and not by reference to the right of the plaintiffs to particular reliefs."

In this case, the Division Bench of this Court held that once the Court is moved under Section 92 CPC, the scope of its enquiry must be determined in the light of what is germane to the various matters indicated and not by reference to the right of the plaintiffs to particular reliefs."

ii) (Swami Parmatmanand Saraswati and another v. Ramji Tripathi and another) AIR 1974 SUPREME COURT 2141, wherein the Apex Court held thus :

"10. A suit under Section 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92....It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights..."

In this case, the Honourable Supreme Court held that the allegations in the plaint be looked into in the first instance to see whether the suit falls within the ambit of Section 92 CPC. If after evidence is taken, it is found that breach of trust alleged has not been made out, the suit must be dismissed. It is further held that the plaintiffs must sue to vindicate the right of the public but not for their individual or personal rights.

iii) (Kumudavalli and another v. P.N.Purushotham) AIR 1978 MADRAS 20 5, wherein the Supreme Court held thus :
"The only substantial question which arises for consideration in this appeal is whether the suit as framed is maintainable. S.92 C.P.C., which operates as a shield against the mismanagement of public trust whether charitable, religious or otherwise, is as far as possible exhaustive so as to afford protection for the due and proper maintenance, upkeep and processing of public trusts and to guard as against mismanagement, misappropriation and wild indulgence on the part of those who are for the time being enjoined to administer such trusts. The infringement of private rights is undoubtedly outside the scope of enquiry under the Section.... A resident of the locality who has some nexus or connection with the trust in the sense that he has interest in its well-being and prosperity, can, under certain circumstances, be taken to be a person having an interest in the trust.... In the case of a public school such presumption could also be raised if he is an old student of the school, which necessarily involves a connection with it and if he is also a resident of the locality in which the school is situate he is doubly qualified to lay an action along with another under S.92 C.P.C. What is to be primarily established is that the suit relates to a trust created for a public purpose (2) it should contain allegations against the person-in-breach, such

as breach of trust, misappropriation or mismanagement and (3) the necessity in the particular circumstance of a given case for administration of the trust by a body other than the body in management...."

In this case, a learned single Judge of this Court held that the remote relationship of a person with the founder of the Trust is not sufficient to maintain the suit. The meaning of expression 'having an interest' cannot be held to be illusory or hypothetical.

iv) (Chenchu Rami Reddy and another v. The Government of Andhra Pradesh and others) AIR 1986 SUPREME COURT 1158, therein the Apex Court held as under :

"6. We cannot conclude without observing that property of such institutions or endowments must be jealously protected. It must be protected for a large segment of the community has beneficial interest in it (that is the raison d'etre of the Act itself). The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the closest-and-best-attention approach to guard again all pitfalls. The approving authority must be aware that in such matters the trustees or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution...."

In this case, the Apex Court deprecated the action of the Government for sale of land belonging to charitable endowment by private negotiation instead of public action. It is further held that the Court must fix reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment.

v) (R.M.Narayana Chettiar and another v. N.Lakshmanan Chettiar and others) AIR 1991 SUPREME COURT 221 wherein it is held by the Supreme Court as follows :
"17... Such a construction of the provisions of S.92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the Court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, Court should normally give notice to the defendants before granting leave under the said section to institute a suit, the Court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law."

In this case, it was held by the Supreme Court that after a suit is instituted on the basis of leave granted without notice to the defendants, the suit would not thereby be rendered as bad in Law or nonmaintainable since grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation.

vi) (R.N. Selvam Mudaliar and others Vs. P.A. Raju Mudaliar and another) 1952 Volume II MLJ Page No. 653. In this case, a suit under Section 92 CPC has been filed by certain persons interested in a Church for removal of the existing trustees, sanction was obtained from the Advocate General, but again certain others had to be added as parties and the further sanction for adding parties was also obtained from the Advocate General and in an application for adding as parties the Judge in Chambers ordered for the necessary addition. The Division Bench held that the order of the Judge in Chambers allowing addition of parties was not a judgment within the meaning of Clause 15 of Letters Patent and hence not appellable.

vii) (C.R. Neelakantan and another Vs. G. Bakthavatsalam) 1967 MLJ Volume I Page 29. In this case, a suit has been properly instituted under Section 92 CPC after obtaining sanction of the Advocate General. It was held that any amendment sought for in the suit subsequently for adding of parties, which is merely formal and does not alter the nature of the suit, further sanction of the Advocate General is not necessary.

10. Mr.T.V.Ramanujam, learned Senior Counsel appearing for respondents 2,3 and 8, has submitted that the second respondent has filed O.P.Nos.219 and 220 of 2002, for leasing the property on a long term lease, the subject of which is pending before the Original Side of this Court; the suit was maintainable neither in law nor on facts; there is no mismanagement of trust; the appellants are not the parties interested, to file the suit under Section 92 of C.P.C.; the appellants are not acting bonafidely; the suit was filed with an intention to restrain the respondents from leasing out the property known as Bens Garden, situate at Chamiers Road, Chennai-28; the plaint does not contain any allegation of mismanagement that the first respondent was a member of the Property Committee and he is aware that the decision was taken only after consultation with the Property Committee; that an advertisement was made in Indian Express on 01.09.1996, calling for project management consultants and after going through the offers the committee shortlisted 12 firms and called upon them to present their proposal; out of 12 firms, only six firms responded; thereafter, meetings were held on 08.03.1997, 29.04.1997, 11.06.1997, 26.06.1997 and 12.0 7.1997, which did not bring any fruitful results; thereafter, a special meeting was held on 18.12.1998 for further advertisement, which also not did not produce any valid response; the property was lying idle since 1994 and the maintenance cost was Rs.27,000/- per month; hence, the same was leased out to the seventh respondent for a monthly rent of Rs.60,000/- for a period of 11 months on 04.03.2002.

11. The learned Senior Counsel also submitted that the first appellant resigned from the Property Committee, since his view has not been accepted by the majority; hence, the first respondent cannot be termed as the

person interested, within the meaning of Section 92 of C.P. C.; some portion of the property was sold after obtaining permission of the Court; some of the properties were leased out for a long term, that too, with the permission of the Court; the appellants suppressed the above said facts and attempted to indirectly criticise the order; no specific averment has been made in respect of mismanagement; the successive Archbishops have managed the property for the past 50 years; no specific allegation is made against any of the Archbishops; the appellants were not clear as to whether the property belongs to the De Monte Trust or Archdiocese; the Archdiocese of Madras-Mylapore is a registered society and the properties of John De Monte Trust cannot be merged with Archdiocese; the averment relating to rendition of accounts to the Archbishop of Goa is also untenable; this respondent has taken all precautions in processing the lease of Bens Garden property to the seventh respondent; assuming some of the allegations of mismanagement are only against Archdiocese and not against the Trust, the seventh respondent has engaged in running various institutions to satisfy the requirement of the desire of the testator, as contemplated in the Will; 390 grounds has been leased out to Franciscan Missionaries of Mary, who run the Women's College "STELLA MARIS" at Cathedral Road for a nominal rent of Rs.20,000/- per year; the property sold to Parry and Company was as per the permission granted by this Court; all the transactions are transparent and also in consonance to the wishes of Sir John De Monte; no grounds have been made out for framing scheme to manage the affairs of the trust; the appellants attempted to ventilate their personal grievances; the averments are vague and devoid of any merits; the appellants deliberately failed to array the trust as a respondent; hence, leave granted originally is not valid; the documents enclosed by the appellants do not make out a prima facie case of breach of trust; even the resignation letter tendered by the first appellant does not whisper any mismanagement or breach of trust; the first appellant was Property Committee Member of the Church and not to the trust; the role that he played as a member of the Property Committee of the trust does not entitle him to satisfy the words 'interested person' referred to under Section 92 of C.P.C. and that the learned single Judge rightly revoked the leave granted and dismissed the applications for impleading and, accordingly, prayed for dismissal of the appeals.

12. Mr.M.K.Kabir, learned counsel appearing for the respondents 1,4,5 and 6 also submitted his arguments on the same lines, as advanced by the learned Senior Counsel for the respondents 2,3 and 8.

13. Mr.Kabir relied upon the below mentioned decisions in support of his case:-

i) (T.R.Ramachandra Iyer and another v. P.A.Parameswaran Munbu and others) AIR 1919 MADRAS 384 wherein it was held thus;

"...The case of Jan Ali v. Ram Nath Mundul (1982) 8 Cal.32 was a leading decision of the former class. It ruled that worshippers or persons accustomed to say their prayers in a mosque were not within the purview of S.539 as persons having a direct interest in the foundation. This ruling was followed by this High Court in Narasimha v. Ayyan Chetti (1989) 12 Mad 157. The

learned Judges here in fact went further, holding that even the fact of the plaintiffs being managers of the temple in suit did not being them within the provisions of S.539.
...Apart from authority, appellant relied mainly relied on the enumeration of alleged crucial instances, as admitting only of a decision consistent with his claim. But he did not show how any principle could be deduced from them and so far as they could be tested with reference to convenience, the result was against him, since apart from consideration of bona fides, the possession of a mere right to worship affords no security for the plaintiffs' ability to propose a suitable scheme or later to see to its working. On the subject matter and language of the section it was suggested that the interest entitling to sue should be defined liberally to include such cases as appellant's, because the necessity for the consent of the Advocate-General or Collector will afford a corrective, where one is required. But that consent is merely a condition precedent to the institution of the suit and cannot affect the responsibility of the Court for the decision as to the plaintiffs' qualification. On the other hand, no good reason has been shown against the interpretation of the word "interest" in the section in the manner in which it is ordinarily interpreted in other legal connexions and in which I shall interpret it, as an interest which is substantial and not sentimental or remote. This conclusion is consistent with the only cases cited, in which a merely potential right to claim the benefits of the trust was directly in question, Ludlow Corporation v. Greenhouse ((1827) 1 Bligh 17 = 4 E.R.780) and Bedford Charity, In re ((1819) 2 Swans. 470=19 R.R.107, the former insisting on proof of a 'clear' interest, whilst the latter negatived the interest in a charity for the poor of one place alleged by persons, who were wealthy and lived in another.
...For they do not arise on the statement of appellant's position, which has been made. It involves that his interest is based on a mere possibility and is too remote to be substantial: and therefore however laudable his motives or those of the society, in which he holds office, his right to sue has not been established."

In this case, a Division Bench of this Court held that the right to worship in temple is not such an interest as will give worshippers right to sue under Section 92 and the interest, which is required of a person, wishing to sue under Section 92 must be substantial and not sentimental or a remote interest.

ii) (Mahant Harnam Singh v. Gurdial Singh and another) AIR 1967 SUPREME COURT 1415 wherein it was held thus:-

"(6) As we have indicated earlier, in the plaint the plaintiffs claimed interest in the trust property in their capacity of representatives of the owners of the land situated at village Jhandawala and of residents of village Jhandawala. The findings of fact recorded show that the land, which was donated to this institution, was given by the inferior owners of this village out of their joint land. The plaintiffs respondents did show that they were Lambardars in the village but no attempt has been made at any state to prove that any of the two plaintiffs was an inferior owner of any land situated in this village, or that he was a descendant or a successor-in-interest of any of

the inferior owners who donated the land to this institution in the year 1904. The mere capacity as Lambardars does n ot entitle the plaintiffs respondents to claim that they are representatives of the inferior owners of the land who donated the land to this institution.... Mere residence in a village where free kitchen is being run for providing food to visitors does not create any i nterest in the residents of the village of such a nature as to claim that they can institute a suit for the removal of the Mahant. The nature of the interest that a person must have in order to entitle him to institute a suit under S.92 C.P.C. was first examined in detail by the Madras High Court..."

In this case, a suit was filed against the institution, which is running free kitchen, serving free food to visitors by the residents of the village, where such food is served. The Hon'ble Supreme Court held that they cannot be called as interested persons and mere residence in a village does not create any interest.

iii) (C.Kalahasti and other v. R.Sukhantharaj and others) 88 MADRAS LAW WEEKLY 577 wherein it was held thus:-

"...Under S.539 c.P.C.1888, the expression 'persons having direct interest to the trust' was used. But in S.92 C.P.C.1908, we find the phraseology 'having an interest in the trust'. This change in the phraseology may not, however, make much difference to the true import to the word 'interest' in respect of the trust. All that it, in our opinion, means is that the persons figuring as plaintiffs in a suit under S.92 must have an interest in the trust, that is to say, an interest special or particular as distinct from the generality of the interest, which the public may have in the trust.... When a question of maintainability of the suit by them was raised, one of them who had claimed to have worship in the temple relied on his right as a Hindu to worship in the temple as entitling him to institute the suit. The majority held that though, as a Hindu, he might have the right to worship in the temple, he had not, on that ground alone, the interest required by S.92 of the Code, to maintain the suit. It is obvious from this decision that the general interest a person, as a Hindu, may have in a temple in that he might possibly worship in the temple would not by itself be sufficient to satisfy the requisite that he must be a person who has an interest in the trust. In other words, something more than the generality of interest, which he had, should be established as a kind of special factor to establish interest as is required by S.92.
...The whole object of S.92 is to prevent people from interfering, by virtue of the Section, with the administration of charitable trusts merely in the interest of others and without any real interest of their own."

In this case, a Division Bench of this Court held that the whole object of Section 92 is to prevent persons from interfering, by virtue of the Section, with the administration of charitable trusts merely in the interest of others and without any real interest of their own. The person filing a suit must stand on the special relationship with the trust as distinct from the rest of the community in respect of the suit trust, so that he may have a particular direct relationship with the institution and to hold that any member of a public who may have a distinct or indirect connection or relationship with the institution, is a person having interest in the trust,

would dilute the requirement of Section 92.

iv) (P.Sivagurunatha Pillai and another v. P.Mani Pillai (died) and others) AIR 1984 MADRAS 328 wherein it is held thus:-

"9...Thus, though the appellants have made a claim in the plaint that the suit had been instituted in a representative capacity for the benefit of the public at large, even the evidence of P.W.1 clearly establishes that he and his son, who is also not a resident of the place, alone are interested in fighting out the suit owing to personal animosity and that the public of Pandanallur and Keelamandur villages do not support them.... That the appellants might have belonged to the family entitled to the hereditary trusteeship of Sri Pasupatheeswarar temple would not clothe the appellants with interest of such a nature as to enable them to maintain a suit under S.92 C.P.C. for according to the case of the appellants, the original endowment was not for the purpose of performing any Kattalai in the temple and the appellants had not established...
10... We are of the view that mere residence of the first appellant in the village would not enable the first appellant to claim that he is a person interested in the affairs of the choultry and its properties and as such entitled to maintain the action under S.92 C.P.C. We may briefly refer to some of the decisions to which our attention in this connection was drawn by counsel on both sides. The decision in chotalal Lakshmiaram v. Manohar Ganesh Tambekar (1899) 26 Ind App 19 9. relied on by the learned counsel for the appellants does not, in our opinion, lay down that mere residence in a place would suffice to enable a person as a person interested to maintain the suit under S.92 C.P.C. G.Sanyasayya v. Muthemma, AIR 1919 Mad 943, was a case where the suit under S.92 C.P.C. was brought by persons who are residents of the locality in which the choultry was situated, but also members of the community for whose benefit the charity was founded and under those circumstances, this court held ;that they had sufficient interest to maintain the suit under S.92 C.P.C. It has to be remembered that mere residence alone was not considered to be sufficient, but in addition to that, the plaintiffs who instituted the suit were also members of the community for whose benefit the choultry was built. that would suffice to render the decision in G.Sanyasayya v. Muthemma AIR 1919 Mad 943 inapplicable to this case. N.Surayanarayana v. Lakshminarasimha, AIR 1926 Mad 267 (269) laid down that persons belonging to neighbouring villages who attend the temple on important occasions and also celebrate the marriages at the temple are persons having an interest in the temple within the meaning of S.92 C.P.C.... However, in Harnam Singh v. Curdial Singh, AIR 1967 SC 1415 1967-2 SCR 739, the Supreme Court, while considering the question of the nature of the interest under S.92 C.P.C. to sustain a suit thereunder, pointed out that mere residence in a village where free kitchen is being run for providing food to visitors does not create any interest in the residents of the village of such a nature as to claim that they can institute a suit for removal of the Mahant..."

In this case also, a Division Bench of this Court held that the interest for filing a suit under Section 92 of C.P.C. should be real, substantive and excessive interest, though it need not be a direct one and the fact that the plaintiff might have belonged to the family entitled to

hereditary trustship of the temple would not clothe the plaintiff with the interest of such nature as to enable him to maintain a suit under Section 92.

v) (Swami Parmatmanand Saraswati and another v. Ramji Tripathi and another) AIR 1974 SUPREME COURT 2141 wherein it was held by the Honourable Supreme Court as follows:-

"10. A suit under Section 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail: and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public...

11... There is no reason to think that whenever a suit is brought by two or more persons under Section 92, the suit is to vindicate the right of the public. As we said, it is the object or the purpose of the suit and not the reliefs that should decide whether it is one for vindicating the right of the public or the individual right of the plaintiffs or third persons."

In this case, the Hon'ble Supreme Court held that a suit under Section 92 of C.P.C. is a suit of a special nature, which presupposes which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section and if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail. The Hon'ble Supreme Court further held in that suit that when the plaintiffs were not suing to vindicate the right of the public, but were seeking a declaration of their individual or personal right or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be decided on the scope of Section 92.

14. Mr. T.R. Rajagopalan, learned Senior Counsel for the seventh respondent, has submitted that the trust has invited offer from public to lease out Bens Garden property; out of 15 persons, seventh respondent was selected, as his offer was best; the trust has originally incurred Rs.27,000/- per month towards expenses of watch and ward; in order to avoid unnecessary expenses for the idle property, they have taken a decision to lease it out temporarily for 11 months to the seventh respondent at the rate of Rs.60,000/- per month; in respect of long term lease, the seventh respondent has offered Rs.37.50 crores; the trust has filed necessary original petitions seeking permission from this Court, where also the appellants have filed their

objections and delayed the matter; the intention of the appellants is not to lease out the property to the seventh respondent herein and nothing more; the first appellant was in the Property Committee from the year 199 7 to 2000, but no valid service has been rendered by him; the appellants have not made out a case for breach of trust and the appellants are neither the 'parties interested' nor the bonafide persons and that in order to ventilate personal animosity against the seventh respondent, the suit has been filed and, accordingly, he prayed for dismissal of the appeals.

15. The learned single Judge framed the below mentioned issues:-

i) Whether the leave granted to the plaintiffs in Application NO. 56 7 of 2002 dated 27-02-2002 is liable to be revoked?
ii) Whether the Trust can be impleaded as 10th Defendant in the suit after getting leave to sue?
iii) To what other relief the parties are entitled to?

16. The learned single Judge held that the appellants herein may be respectable persons but are not persons interested in the Trust and revoked the leave granted earlier. The learned single Judge rejected the allegation of mismanagement on the ground that the respondents have already filed O.P. seeking permission of the Court as to whether the property can be leased out to the 7th respondent or not and as such the said averment is untenable. The learned single Judge also found that exparte leave was granted only against the other defendants and not against the Trust, which cannot be cured by impleading the Trust later.

17. Philanthropist Sir John De Monte amazed substantial wealth and acquired lot of property, both movable and immovable. He has executed a will dated 19th July 1820 and subsequently executed a Codicil dated 25th April 1821 thereby bequeathed vast extent of the property in favour of John De Monte Trust, which is named after him. The Trust owns other item of properties as well. As far this appeal is concerned, it covers the following properties alone.

"The property bearing RS No.3923 of Mylapore Village to a total extent of 257 grounds and 81 sq.ft., containing the following houses No.1, 3, 4, Boat Club Road, No.72, 73, 74, 75, Chamiers Road, all with superstructures, trees, plants and vacant land therein which is known as Bens Garden."

18. The trustees have already filed O.P. Nos. 219 and 220 of 2002 under Section 7 of Charitable and Religious Trust Act seeking permission of the original side of this Court to lease out 100 grounds and another 50 grounds for 50 years for a lease amount of Rs.25 Crores and Rs.12.50 Crores respectively. It is also relevant to mention that the term of the lease shall be at the first instance for a period of 10 years with renewal for four like period. A draft lease deed was also filed along with the said O.P.s. The appellants herein have also filed their objections in the said O.P.s.

19. Section 92 CPC authorises either the Advocate General or two or more persons having an interest in the Trust to file a suit for claiming

one or more of the reliefs specified in clauses a to h of Subsection 1 of Sec.92. To invoke Section 92, four conditions are to be satisfied namely (i) The trust is created for the purpose of public or charitable or generous nature (ii) there was a breach of Trust or a direction from Court is necessary for the administration of such Trust (iii) The relief claimed in the suit is one or other reliefs enumerated therein and (iv) The suit must be a representative one on behalf of public and not by an individual for their own interest.

20. The main purpose of Section 92 is to give protection to a public Trust of a charitable or religious nature from being subjected to harassment by suits being filed against them. So, it provides that suits of this description can be filed by an Advocate General or two or more persons having interest in Trust with leave of the Court. Maintainability of suit under Section 92 CPC depends upon the allegations in the plaint. In this case, there is no dispute that the Trust is a public Charitable Religious Trust. The appellants herein have alleged mismanagement and the respondents have alleged that the appellants are not persons interested.

21. It is alleged by the first appellant that he was a member of the Trust Property committee. But the respondents allege that the first appellant was the member of Church Property Committee. The first appellant has resigned from the property committee in the year 2000. The other two appellants held various offices and attached to service organisation.

22. Mr. Sriram Panchu, learned Senior counsel appearing for the appellants vociferously argued that if the appellants are not persons interested, who else then. It is also argued that the respondents are attempting to lease out the property for a longer period like 50 years and 99 years which amount to sale of the property and the same is contrary to the wishes of the testator, who has categorically mentioned in his will that the property should not be sold. It is further added that some other property of the Trust was leased out for 99 years for a paltry amount, some of the properties were sold to Parry & Co., Though some of the institutions approached by offering fancy amount to take Bens Garden property for 99 years, t he 2nd respondent had chosen to lease it out only to the 7th respondent, who is an expolitician. In case the proposed lease to the 7th respondent is allowed, it will be against the wishes of the testator, however, the lease granted to run Stella Mary's College cannot be equated to the proposed lease to the 7th respondent.

23. Per Contra, Mr. T.V. Ramanujam, learned senior counsel appearing for the respondents 2, 3 and 8 submitted that the 1st respondent was a member of Church committee from 1997 till 2000. Though majority of the Members of the Church committee extended their cooperation to lease out the property of the Trust, the 1st respondent alone refused to extend his co-operation, besides opposed for leasing out the property to 7th respondent alone without any valid reasons. In support of his contentions, the learned Senior counsel relied on the resignation letter dated 21-03-2000 of the first appellant herein to show that the first respondent has not whispered anything about the mismanagement,on the contrary, he praised the 2nd respondent. It is

further submitted by the learned Senior counsel quoting the letter dated 19-10-2 000 of the first appellant that the first appellant and his 'group' were very happy and the 2nd respondent promised them that the entire process would be transparent. It is also quoted from the said letter - "first appellant and his 'group' have unanimously resolved to request the first appellant and one another Chacko to write to your grace on these lines and to request you to personally intervene in this matter and to conduct a complete and independent review of how the properties of the Church in this diocese are being managed and what needs to be done to achieve greater efficiency and effectiveness in order to truly fulfil the mission of Christ's church on earth" to say that the allegation of mismanagement was not found in the letter and the same is nothing but an after-thought. It is also seen from the letter that the first appellant and V.J. Chacko have signed it. The other letters written by first appellant to 2nd respondent herein are dated 2 9-08-1997, resignation letter dated 23-02-2000, letter dated 31-03-20 00, 10-10-2000, 11-10-2000, 19-10-2000, 24-01-2001, 29-01-2001 and 09 -02-2001. All these letters do not substantiate the averment of mismanagement levelled against the 2nd respondent.

24. The 2nd respondent has filed the O.P. in February 2001 seeking permission of the original side of this Court. The first appellant has chosen to file caveat and objections immediately; but waited for one year to file the present suit after obtaining leave on 27-02-2002. The said fact was brought to the notice of this Court by Mr. T.V. Ramanujam, learned Senior counsel to justify that the appellants herein, without any valid reasons have prevented the Trust from carrying out its objectives.

25. It is seen that long term lease and sale of property to the Management of Stella Mary's College and Parry & Co., respectively were made with the permission of the Court, but the appellants herein have alleged as if the 2nd respondent or his predecessor have unilaterally leased out or sold the property. No valid averments of mismanagement or mal-administration has been made out in the plaint.

26. A suit under Section 92 CPC is primarily against a Trust and can only be instituted on the ground there was breach of trust and the directions of the Court is deemed necessary for the administration of the Trust. The plaint must aver one or other grounds and it is such allegation that gives the Court jurisdiction under Section 92 CPC. In this case, we do not find any such allegation of mismanagement. It is seen from the prayer of the suit that a luxurious relief like (i) rendition of account by the erstwhile and present trustees till the date of decree - but without mentioning the period (ii) directing recovery of all monies dues to the trust - without mentioning the parties (iii) directing identification of all the trust properties (iv) directing recovery of all properties belonging to the Trust currently not in the possession of the Trust, has been sought on vexatious allegations. It is also necessary to mention that the sole Trustee of the Demonte Trust is Arch Bishop Madras-Mylapore and his successors. Successive Arch Bishops have managed the property of the Trust during their tenure, but appellants have not specified any of them. Similarly, the vexatious prayer for rendition of account by erstwhile and present trustees

'till the date of decree' without mentioning the date of commencement of the period has been made. The use of the word ' instituted' in Section 92 makes it incumbent on the Court to see what the prayers were in the plaint at the date when the suit was instituted, in order to satisfy itself whether Section 92 has been complied with. After seeing the plaint, one can easily say that the suit has been filed only to harass the Trust.

27. The words 'persons interested" is incorporated with the object of preventing the people interfering with the administration of charitable Trust without any real interest. The interest required must be a clear and substantive interest in the particular trust, but not merely a remote, fictitious or contingent one.

28. In the Judgment of this Court reported in (T.R.Ramachandra Iyer and another v. P.A.Parameswaran Munbu and others) AIR 1919 MADRAS 384 cited supra reiterates that "the interest which required of a person wishing to sue under `Section 92 CPC must be a substantive and not a sentimental or remote interest".

In the decision reported in (Mahant Harnam Singh v. Gurdial Singh and another) AIR 1967 SUPREME COURT 1415 their Lordships referred to AIR 1919 Madras 384 to come to a conclusion that "Mere residence in a village where

free kitchen is being run for providing food to visitors does not create any interest in the residents of the village of such a nature as to claim that they can institute a suit for the removal of the Mahant."

The Division Bench of this Court in the decision reported in (C. Kalahasti and other v. R.Sukhantharaj and others) 88 MADRAS LAW WEEKLY 577 held that "All that majority of the full bench meant to say was the plaintiffs must stand on a special relationship with the trust as distinct from the rest of the community in respect of the suit trust, so that he may have a particular direct relationship with the institution. To hold that any member of the public, who may have a distinct or indirect connection or relationship with the institution, is a person having interest in the trust, would dilute the requirement of Section 92."

In the decision reported in (P.Sivagurunatha Pillai and another v. P.Mani Pillai (died) and others) AIR 1984 MADRAS 328 Division Bench of this Court held that "interest for filing a suit for framing a scheme in respect of a Choultry should be real, substantive and excessive interest, though it need not be a direct one. A mere resident of the locality where the choultry is situate is not enough. Even the fact that the plaintiff might have belonged to the family entitled to the heriditary trusteeship of the temple would not clothe that the plaintiff is interested in such nature enabling him to maintain a suit under Section 92 CPC."

In the decision reported in (Swami Parmatmanand Saraswati and another v. Ramji Tripathi and another) AIR 1974 SUPREME COURT 2141 the Honourable Supreme Court held that "a suit under Section 92 is a suit of a special nature

which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. If the allegation of breach of trust is not substantive or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail: It is clear that the plaintiffs are not suing to vindicate the right of public but are seeking a declaration of their individual or personal right or person in whom they are interested, then the suit would be outside the scope of Section 92 CPC."

In the decision reported in AIR 1938 Madras 205 (Kumudavalli and another v. P.N.Purushotham) AIR 1978 MADRAS 205, the Supreme Court held "Section 92 C.P.C., operates as a shield against the mismanagement of public trust whether charitable, religious or otherwise, is as far as possible exhaustive so as to afford protection for the due and proper maintenance, upkeep and processing of public trusts and to guard as against mismanagement, misappropriation and wild indulgence on the part of those who are for the time being enjoined to administer such trusts. The infringement of private rights is undoubtedly outside the scope of enquiry under the Section."

29. From the above judgments, it is clear that interest of a person has to be determined on the facts appearing on the relationship of the person to the Trust, with reference to which the suit is brought. No doubt, each and every case has to be decided on the facts and circumstance. On careful perusal of the pleadings and documents placed before the learned Single judge, which were indeed placed before us also. Even though the first appellant held office of the Member of Property Committee of the Trust/Church, it is not sufficient to satisfy the ingredients of Section 92 CPC. The judgment of the Honourable Supreme Court reported in AIR 1974 SC 2141 cautions that the suit should be to vindicate the right of the public and not the right of an individual persons. Hence, we hold that the appellants are not interested persons.

30. Leave must precede the institution of suit. Prior to granting leave, there can be no suit. Leave is essentially a matter of discretion. When trustees are able to satisfy the Court that there is no evidence to support the allegations or that evidence is not sufficient or the intention of the parties are not bonafide or that action is being initiated for selfish personal ends and not with the object of any public good, it is open to the Court to revoke the leave. The court has to take an objective decision on consideration of facts of each case. The court should go into the questions of bonafide of plaintiffs and their capacity to represent the public and also see whether they are really interested in the Trust and are not those whose motives are impure. After appearance, the defendants may ask for revocation of leave and where the plaintiffs have failed to prove that they have any interest in the Trust, exparte leave is liable to be revoked. The learned single Judge taking into consideration of the facts and circumstance of the case found that though the respondents are respectable persons in the locality, they are not persons interested in the trust as contemplated under

Section 92 CPC and revoked the leave.

31. There is no impediment in impleading the Trust as a party after leave has been obtained. In the decision reported (C.R. Neelakantan and another Vs. G. Bakthavatsalam) 1967 MLJ Volume I Page 29, a learned single Judge of this Court held that adding the trust as a party is merely a formal and it does not alter the nature of the suit as such further leave is not necessary. We concur with the said view.

32. Hence, the finding of the learned single Judge dismissing the petition to implead is set aside, however, we confirm the order of the learned single Judge revoking the leave. In view of the confirmation of the order of revocation of leave, the appellants herein do not get any remedy consequent to the setting aside of the impugned order of dismissal of implead petition. However, it is made clear that the trial Court, while deciding the O.P. No. 219 and 220 of 2002 need not take into consideration any of the observations made in these appeals and decide the petitions on their own merits.

In the result, O.S.A. No. 83 of 2003 is dismissed and O.S.A. No. 129 of 2003 is allowed. No costs. Connected CMPs are closed.

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Index : Yes